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INDUFELA COMPANY v. ABDULLAH & ORS.

[C.A. (Wee Chong Jin C.J., Chua and Kulasekaram JJ.) November 12, 1975]

[Singapore — Civil Appeal No. 6 of 1975]

Tort — Fatal accident — Negligence in loading of timber from lorry to pontoon — Deceased employed by firm of general contractors — Loading by mobile truck crane hired out to general contractors — No reasonable explanation as to cause of accident negating negligence — Joint tortfeasors.

In this case the deceased died from injuries suffered in an accident during the loading of sawn timber on to a pontoon from a lorry at a jetty in Jurong. The deceased was employed by the first defendants a firm of general contractors. The second defendants had hired out a mobile truck crane, operated by a crane driver in their employ, to the first defendant for loading the sawn timber on to the pontoon. The personal representatives of the deceased brought an action against both the defendants and alleged that in course of the loading some pieces of timber which were lifted by the crane slipped and fell on the deceased. The trial judge held that as the plaintiffs had established a *prima facie* case of negligence both defendants were under a duty to give a satisfactory or at least a reasonable explanation and as they had failed to do so they were in law equally responsible for the accident. He gave judgment for the plaintiffs against both defendants for $15,302 and costs. The first defendant appealed against the decision contending that the trial judge erred in law in holding that in the absence of a reasonable explanation as to the cause of the accident both defendants were equally responsible for the accident.

Held, dismissing the appeal: the evidence at the trial plainly disclosed that the deceased was killed in the course of an operation jointly carried on by the servants of both defendants. The accident was undoubtedly due to the negligence on the part of another labourer, Ali, employed by the first defendant, and the crane driver, employed by the second defendant or either of them. On the findings of the trial judge the plaintiffs would be entitled to succeed against Ali and the crane driver as joint tortfeasors and to have judgment against both defendants who were vicariously liable for the negligence of their servants. As neither Ali nor the crane driver gave a reasonable explanation as to the cause of the accident which negated negligence on his part or had shown that there was no negligence on his part, the learned trial judge was entitled to hold both defendants equally responsible in law for the accident.

COURT OF APPEAL.

Robert Yap for the appellant.

J. B. Jeyaretnam for the first respondents.

Goh Soon Hock for the second respondents.

Wee Chong Jin C.J. (delivering the judgment of the Court): The plaintiffs, who are the first respondents in this appeal, are the personal representatives of the estate of Razack Abdul Kader (hereinafter referred to as "the deceased") who died from injuries suffered in an accident during the loading of sawn timber on to a pontoon from a lorry at a jetty in Jurong. The first defendants, Indufela Company, the appellants in this appeal, are a firm of general contractors and suppliers of labour which employed the deceased at the time of the accident. The second defendants, Han Chuan Crane Co., the second respondents in this appeal had hired out a mobile truck crane, operated by a crane driver in their employ, to the first defendants for loading the sawn timber on to the pontoon.

The plaintiffs, in an action heard before Choor Singh J., claimed damages from both defendants alleging negligence on the part of both defendants, or one or other of them, their servants or agents in the course of the loading of the sawn timber from a lorry on to a pontoon. The allegation was that "in the course of the loading some pieces of timber which were being lifted by the crane slipped and fell on the deceased pinning him down." The particulars of negligence set out in the Statement of Claim were as follows: —

"Particulars of Negligence

1. Rushing the loading.
2. Not ensuring that the timber was properly secured to prevent it slipping.
3. Not providing a look-out to warn persons whilst the timber was in motion in the air.
4. In the respects aforesaid failed to provide a reasonably safe method of working and/or effective supervision, thereby exposing the deceased to unnecessary risk.
5. The plaintiffs will further rely on the falling of the said pieces of timber as evidence of negligence."

The first defendants in their defence denied negligence and alleged that the accident was "solely caused or contributed to by the negligence of the second defendant its servants or agents." The second defendants in their defence claimed that the accident was "caused solely or partly by the negligence of the first defendant by its servants or agents and by the negligence of the deceased or alternatively by the negligence of one or other of them."

The facts elicited from the evidence were these. The deceased was a general labourer who normally worked on ships as a stevedore. On the day of the accident, the deceased and a fellow labourer named Ali Mohamed Ghani (hereinafter referred to as "Ali") had no stevedoring work to do and on hearing that work was available at a jetty in Jurong they went there and were employed by the first defendants, together with other labourers, to load loose sawn timber on to a pontoon. The timber was lying near the office of the first defendants near the jetty. This timber had to be first loaded on to lorries for transportation to the jetty. At the jetty the timber had to be transferred from the lorries on to a pontoon which was alongside the jetty. This transfer was effected by a mobile crane belonging to and operated by a crane driver employed by the second defendants. The first defendants had hired the mobile crane from the second defendants. The accident happened in the course of the transfer of one bundle or stack of the timber from a lorry at the jetty on to the pontoon. A bundle or stack fell or slipped off the lorry on to the deceased who was standing at the jetty near the lorry.

The method used to transfer the timber from a lorry to the pontoon was as follows. A lorry loaded with timber on arrival at the jetty would park with the rear end facing the pontoon which was alongside the jetty. The mobile truck crane would then be parked alongside the lorry with its rear end also facing the pontoon. Three of the first defendants' labourers were assigned the task of having the timber removed from the lorry by the crane. On the pontoon four of the first defendants' labourers attended to the unloading and stacking of the timber on the pontoon. The deceased, Ali and another were working on the shore end. The deceased was on the jetty beside the lorry whilst Ali and the other labourer were on the lorry. First, a long single strand wire sling

was passed and fastened round one end of a bundle of the timber and then attached to the hook of the crane. The crane would then lift the slung end six to eight inches high to enable a so called 'wedge', described as a large square piece of wood, to be inserted beneath the middle portion of the bundle. After the wedge had been inserted in place the raised end of the bundle was lowered until it rested on the wedge. Next, another sling was similarly passed and fastened round the other end of the bundle of timber and after this had been done the crane would raise the bundle and swing it to the pontoon where it was unloaded. At times, however, two wedges were inserted under a bundle of timber, one on each end of it. The decision whether to insert one or two wedges rested with the labourers working on the lorry.

During the trial the judge heard three conflicting versions as to the method actually used to transfer the bundle of timber which fell on the deceased. Ali, the servant of the first defendants gave this version. He had fastened a sling round one end of that bundle, a wedge had been placed under the bundle, the second sling had been fastened round the other end by him and he was about to attach the second sling to the hook of the crane. Then, as the hook was being lowered to enable him to reach it to attach the second sling to it, the bundle slipped. He was then standing on the bundle of timber. On this occasion he had decided to use one wedge instead of two.

The crane driver, the servant of the second defendants, gave a different version. He said that a sling having been fastened round one end of the bundle and a wedge inserted he lowered the bundle for it to rest on the wedge. Then, the same sling was shifted inwards and he was asked to and he raised the bundle and a second wedge was inserted. He was then asked to lower the bundle which he did and the bundle rested on the second wedge but before it could rest on the first wedge the bundle "at the second wedge end slipped from their resting place and fell off" the lorry. This version was not challenged by counsel for the first defendants or by counsel for the plaintiffs.

A third version was given by Loh Niap Kek, who was employed by the first defendants and who said he supervised the loading of all the timber from the lorry to the pontoon. The trial judge rejected this version as he considered Loh Niap Kek an untruthful witness.

The trial judge accepted Ali's version because he was of the opinion that Ali was speaking the truth and because, furthermore, Ali's version was substantially supported by the crane driver. The trial judge also found that "no one could explain how or why the timber slipped out of the loop and fell on the deceased" and that the timber could not have slipped out of the sling in the absence of negligence on the part of one or other of the two persons directly concerned with the transfer of the timber from the lorry to the pontoon. He held that either Ali did not place the sling round the timber securely and was negligent or the crane driver mishandled the load in question and it could also be that both of them were negligent.

The trial judge held that as the plaintiffs had established a *prima facie* case of negligence "both defendants were under a duty to give a satisfactory or at least a reasonable explanation" and as they had failed to do so and had no explanation at all they "were in law equally responsible for the accident." He gave judgment for the plaintiffs against both defendants for $15,302 and costs.

The first defendants now appeal naming the plaintiffs and the second defendants as respondents. They contend that the trial judge erred in law in holding that in the absence of a reasonable explanation as to the cause of the accident both defendants were equally responsible for the accident. They contend that the true principle is that all they were required to do was to satisfy the court that there was no negligence on the part of their own servant, Ali, or give an explanation negating negligence on the part of Ali.

In our opinion Ali's evidence fell far short of establishing that the timber slipped from the lorry through no negligent act or omission on his part. He did not give evidence that the two slings which he said he had "looped" around the two ends of the bundle of timber had been so "looped" that they had securely fastened the bundle of timber so as to ensure that the bundle would not slip when it was in a raised position and not resting on the wedge placed underneath it. All Ali said was that he had "fastened the first sling at one end" and "was about to fasten the other sling when the timber in the sling began to slide down. I do not know why." In our opinion it is clear also that Ali's evidence did not amount to any explanation as "to how or why the timber slipped out of the loop" and furthermore his evidence did not amount to negating negligence on his part.

The second defendants in their respondents' Notice contend that the decision of the trial judge should be varied or reversed in so far as they are held to have been equally to blame with the first defendants for the death of the deceased. They contend that the blame and liability for the accident ought to be ascribed wholly to the negligence of the first defendants and their servants and that the crane driver had given an explanation which negates negligence on his part. With regard to the contention that Ali was solely to blame for the accident it is submitted that Ali's evidence established that Ali was negligent in that he had failed to secure the timber with the sling and that this was the cause of the timber slipping out of the sling. It is also contended that the evidence of the crane driver is sufficient to establish either that he was in no way negligent or that he had given an explanation which negates negligence on his part.

However, although Ali's evidence failed to establish that he was not negligent, it contained no admission, nor did it establish, that he had failed to properly secure the timber with the sling. In so far as the crane driver's own evidence is concerned, he said that he lowered the timber which rested on the second wedge but before it could rest on the first wedge "the planks at the second wedge end slipped from their resting point and fell off the lorry. I do not know why the planks slipped when the stack was lowered." In our judgment that evidence clearly did not explain the cause of the timber slipping and, considered with

the rest of his evidence, was insufficient to negate negligence on his part.

In our judgment the evidence at the trial plainly disclosed that the deceased was killed in the course of an operation jointly carried on by the servants of both defendants. Ali and the crane driver both said they did not know why the timber slipped from the sling or slings. It follows that neither of them gave an explanation as to the cause of the accident. We agree with the trial judge's finding that the accident was undoubtedly due to negligence on the part of Ali and the crane driver or of either of them. On the findings of the trial judge the plaintiffs would have been entitled to succeed against Ali and the crane driver as joint tortfeasors and to have judgment against both defendants who are vicariously liable for the negligence of their servants. As neither Ali nor the crane driver has given a reasonable explanation as to the cause of the accident which negates negligence on his part or has shown that there was no negligence on his part we are of the opinion that the trial judge was entitled to hold both defendants equally responsible in law for the accident.

In the result the appeal of the first defendants is dismissed and the cross-appeal by way of Notice of the second defendants to reverse the judgment against them is also dismissed.

Appeal and cross-appeal dismissed.

Solicitors: *Battenberg & Talma; J. B. Jeyaretnam & Co.; A. S. K. Wee.*

SOMASUNDARAM & ANOR. v. TONG NAM CONTRACTORS (PTE) LTD.

[A.C.J. (Winslow J.) July 17, 1975]
[Singapore — District Court of Appeal No. 16 of 1974]

Landlord and Tenant — Controlled premises — Claim for possession by owners — Tenants claiming protection as statutory tenants — Appeal against trial District Judge's decision — Whether there was a statutory tenancy — Control of Rent Act, (Cap. 266), ss. 27(a) & 28.

Landlord and Tenant — Statutory tenancy — Tenants parted with possession of premises — Whether they could claim protection as statutory tenants — Control of Rent Act. (Cap. 266), ss. 27(a) & 28.

The respondents as owners claimed for possession of their premises at No. 67, Bukit Timah Road. The first appellant alleged that he carried on business known as "Nathan Brothers" at the said premises in partnership with the second appellant and claimed that they were statutory tenants. The learned trial District Judge held that since 1966 the firm of Nathan Brothers was not in fact operating at all. It was a fictitious firm and the firm's name had obviously been retained and registered by the appellants as a means to enable the second appellant to block any attempt by the respondents to recover possession of the premises. The learned trial District Judge, accordingly, held that the first appellant was in unlawful occupation of the said premises. The second appellant was held to have completely abandoned the statutory tenancy which he possessed from 1958 onwards by failing to remain in possession of the premises with the necessary "animus" long before the present proceedings were instituted.

The appellants appealed against the aforesaid judgment.

Held, dismissing the appeal: (1) the appellate court did not have the advantage which the trial District Judge had of seeing, hearing and thereby being better able to assess the credibility of witnesses;

(2) there was nothing in the record of evidence which showed that the learned trial District Judge did not have overwhelming material on which he could properly arrive at the decision which he reached on facts;

(3) the second appellant parted with possession of the premises in 1966 and was not a statutory tenant by reason of section 27(a) of the Control of Rent Act.

[Editorial Note: The appellants appealed to the Court of Appeal (Civil Appeal No. 22 of 1975, Wee Chong Jin C.J., Chua and Tan Ah Tah JJ., September 9, 1975). Upon reading the record of appeal and upon hearing counsel it was ordered that the appeal be dismissed with costs.]

Cases referred to:-

(1) *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.* [1964] M.L.J. 71.

(2) *Ramasamy Pillai* v. *Meyappa Chettiar* [1955] M.L.J. 105, 106.

(3) *Keeves* v. *Dean* [1924] 1 K.B. 690.

(4) *United India Fire & General Insurance Co. Ltd.* v. *Jaffnese Co-operative Society Ltd.* [1971] 1 M.L.J. 118.

DISTRICT COURT APPEAL.

Karuppan Chettiar (*T. G. Dunbar* with him) for the appellants.

Kirpal Singh for the respondents.

Winslow J.: The first appellant who claimed to be conducting a business known as "Nathan Brothers" at No. 67 Bukit Timah Road in partnership with the second appellant, was, after a careful analysis of the evidence and consideration of the pertinent authorities, held by the trial District Judge to be in unlawful occupation of the said premises which are owned by the respondents/landlords. The second appellant, after similar considerations, was held to have completely abandoned the statutory tenancy which he possessed from 1958 onwards by failing to remain in possession of the premises with the necessary "animus" long before the present proceedings were instituted in 1972 for recovery of possession thereof from them both. It is not surprising that such a decision was reached when one considers the facts and the near-startling "ploys" adopted to substantiate possession on the part of the statutory tenant as revealed by the evidence.

An appellate court does not of course have the advantage which the trial District Judge had of seeing, hearing and thereby being better able to assess the credibility of witnesses. There was, however, nothing in the record of evidence which caused me any apprehension that he did not have overwhelming material on which he could properly arrive at the decision which he reached on the facts. If ever there were facts in a case of this kind which pointed almost inexorably — and not merely by a preponderance of evidence — to one conclusion only, this was such a case.

The evidence of PW2, a Director of the respondents, was accepted by the District Judge without any reservations. She told a simple, straightforward story contrasted with which the appellants' versions paled into insignificance and were rightly treated with the near-derision which they deserved as revealed by the following penetrating analysis of the factors militating against them: —